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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,641	08/07/2006	Laurens Last	903-191 PCT/US	7920
23869	7590	02/25/2010	EXAMINER	
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SYOSSET, NY 11791				
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			02/25/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,641	<b>Applicant(s)</b> LAST, LAURENS	
	<b>Examiner</b> JEFFREY ALLEN	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 20-24, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uematsu (U.S. Patent No. 6,142,341) in view of JUD (U.S. Patent Application Publication No. 2002/0094415).

3. Regarding claim 1, Uematsu discloses a spout (10) designed to be sealed on a bag (15) comprising a plastic body which forms a channel that contents of the bag may pass through, wherein the spout has sealing sides (12) situated opposite each other, each sealing side having a sealing surface (12a) which is substantially flat and free from ribs and adapted to achieve a sealed connection with the bag (col. 4, lines 28-30).

4. Uematsu fails to disclose wherein each sealing surface has a rough surface structure.

5. JUD teaches that it is known in the art to manufacture a closure for a container wherein the sealing surface has a rough surface structure (abstract).

6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the sealing surface of Uematsu to be rough, as taught by JUD, in order to improve the seal between the spout and the bag.

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7. Regarding claims 2-3, the modified spout of Uematsu teaches wherein the sealing surface can have a roughness value which lies between 26 and 34 in accordance with VDI Richtlinie 3400 (JUD, par. 9).

8. Regarding claims 5-8, the modified spout of Uematsu teaches wherein the body has a transverse wall (Uematsu, 11) with an opening in it, a tubular element (Uematsu, 20) extending from the side of the transverse side opposite the sealing surfaces and wherein the body has sealing walls projecting at an angle from the transverse wall that are symmetrical, the sealing surfaces of the spout forming the outside of the sealing walls. The sealing walls are at the greatest distance from each other at a central area and are connected to each other at their ends (Uematsu, Fig. 3).

9. Regarding claim 9, the modified spout of Uematsu teaches a bag having film walls provided with a spout that is sealed by a sealing technique (Uematsu, col. 4, lines 28-30).

10. Regarding claim 30, the modified spout of Uematsu teaches wherein the sealing surfaces have a rough structure over the entire sealing side.

11. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Uematsu in view of JUD as applied above and further in view of Araki et al. (U.S. Patent No. 6,241,122).

12. The modified spout of Uematsu teaches all the claimed limitations as shown above but fails to teach wherein the tubular element is provided with a screw thread for a screw cap.

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13. Araki teaches that it is known in the art to manufacture a spout for a bag wherein a tubular element on the spout has a screw thread (12) for a screw cap (2).

14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have manufactured the modified spout of Uematsu with a screw thread and screw cap, as taught by Araki, as another method of closing the spout.

### ***Response to Arguments***

15. Applicant's arguments filed 10/29/2009 have been fully considered but they are not persuasive.

16. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

17. In response to applicant's argument that Jud is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case,

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since applicant's invention and Jud are drawn to sealing a closure on a container they are analogous.

18. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). While Jud itself teaches differently from applicant's invention when the teachings of Jud (to provide a roughness on the sealing layer between a lid and closure) are applied to Uematsu the modified structure reads on the limitations as claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY ALLEN whose telephone number is (571)270-7426. The examiner can normally be reached on Monday through Friday 8:00 AM TO 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/J. A./  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
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